

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

IN RE: RESIDENCY OF
WW DOE and AW DOE

DECISION

HELD: Evidence establishes that the students currently enrolled in the schools of the North Kingstown School District are residents within the Warwick School District. The parent shall dis-enroll the students from North Kingstown and enroll them in Warwick for the 2015-2016 school year.

DATE: July 16, 2015

Introduction

This matter comes before the Commissioner of Education upon the parent's appeal of a previous determination of non-residency for school purposes by the North Kingstown School District (North Kingstown).¹ See RIDE Exhibits 1 and 2. A telephone prehearing conference between the parties² and the designated hearing officer was convened on February 11, 2015, resulting in an understanding that, upon further investigation by North Kingstown, if the determination of non-residency remained unchanged, then the matter would proceed to hearing. Subsequently, North Kingstown concluded on the basis of its investigative findings that the students were residents of the Warwick School District and, accordingly, renewed its earlier demand for disenrollment. Likewise, the parent renewed her earlier claim of appeal and the matter was convened for hearing on June 2, 2015. At hearing, the school districts were represented by their respective counsel; the parent did not appear and was deemed to have waived her presence at this stage of the proceedings.³ The matter was continued for further proceedings in order to afford Warwick an opportunity to investigate and potentially present evidence that would confirm the residence of one of the students, that being Student AW Doe, for school purposes.⁴

On June 25, 2015, the hearing was reconvened. Although duly notified by the Office of

¹ The parent filed a written appeal dated January 16, 2015 with the Commissioner of Education in response to a letter dated December 19, 2014 from North Kingstown's superintendent instructing her to remove her children from the district's schools

² In addition to the parent and counsel for North Kingstown, participating in the prehearing conference was counsel for the Warwick School Department.

³ Despite email communications relating to notice and confirmation of the scheduled hearing date sent to the parties by the Office of the Hearing Officer on May 13, May 19 and May 22, 2015, the parent failed to respond to indicate her availability or to offer alternate dates of availability. In addition, multiple telephone calls made to the parent went unanswered. The parent's email address and telephone number aided in providing notice of the telephone prehearing conference in which she participated.

⁴ An interim order establishing scheduling parameters was entered, thereby ordering that a status telephone conference be convened no later than June 10, 2015 and that the hearing be completed no later than June 16, 2015. The parties in fact engaged in a telephone conference on June 12, 2015, and thereupon agreed to a continuance hearing date of June 25, 2015. The parent of the students was duly notified of said order by mail. She was specifically notified of the June 12 telephone conference by a telephone call from the Office of the Hearing Officer, said call going unanswered.

the Hearing Officer, the parent failed to appear and present any evidence in support of her petition to determine the residency of her children. See RIDE Exhibit 3.⁵ Warwick had attempted to secure the attendance of the parent by means of compulsory process without success; in spite of having served a witness subpoena upon Student AW Doe for purposes of compelling her appearance at the hearing scheduled on June 25, 2015, the student failed to appear. Both Warwick and North Kingstown rested their respective cases without the admission of additional evidence and the record was closed.

Background

The students are siblings who attend school at the elementary and secondary levels in North Kingstown. According to school department records, the mother is designated as custodial parent of the children. See North Kingstown Exhibits 1 and 2. Questions concerning the residency of the children were first raised in May of 2013, when the superintendent was informed that the children were living in North Kingstown with their grandparents. Upon determining that the parent was also a resident of North Kingstown, although at a different address, the inquiry was discontinued. A similar concern about the parent's residency was raised in January of 2014, in the context of a truancy action. However, this was also initially settled with a determination that the parent was living in North Kingstown. In a subsequent truancy proceeding relating to Student AW Doe in September of 2014, the parent attended and stated that she was living at 2-B Eagle Run in East Greenwich.⁶ The truancy proceeding was continued to the following week and, when re-convened, the parent represented that she was now living with

⁵ In addition to written notice dated June 12, 2015 (RIDE Exhibit 3), attempts were made by the Office of the Hearing Officer to notify the parent by telephone and email.

⁶ In fact, counsel for Warwick offered that the Eagle Run address was geographically situated in Warwick, although its mailing address is associated for postal purposes with East Greenwich. TR. pp. 12-13.

her children at the home of her parents at Ten Rod Road in North Kingstown. North Kingstown thereupon, through the agency of its truant officer, re-initiated an investigation in order to verify the children's residency for school purposes. Through monitoring at the Ten Rod Road address, there were no observations made by the truant officer that would permit a finding that the parent and children were living at that location.

The truant officer subsequently learned that the parent reported her address to be on Stony Lane in North Kingstown. A meeting between the parent and truant officer was scheduled for the afternoon of February 12, 2015, at the Stony Lane address in order to obtain verification of the children's residence. Prior to the scheduled time of the meeting, the parent called the truant officer to cancel and indicated that she would call again to reschedule. The parent failed to reschedule the meeting. Nevertheless, through the assistance of a Department of Children and Their Families' case worker who was involved in truancy proceedings relating to AW Doe, the truant officer learned that the database for the Department of Human Services listed the parent's home address as 2-B Eagle Run in East Greenwich.

Additionally, evidence was introduced through the testimony of a private detective engaged by North Kingstown for purposes of verifying the residence of the children and their parent. By means of conducting surveillance over the course of several days between March 15 and March 19, 2015, the detective determined that, based on his observations, the parent resided at the 2-B Eagle Run address geographically located in the City of Warwick.⁷

⁷ The detective conducted surveillance at various times at all relevant addresses without observing the parent's motor vehicle. However, on March 18, 2015, the detective observed the parent picking up Student WW Doe from the Wickford Middle School and followed the parent's vehicle until losing sight of it in traffic. The detective then drove to the North Kingstown address at Stony Lane and, not observing the parent's car there, proceeded to the Warwick residence at 2-B Eagle Run where the parent and Student WW Doe accessed the home. At 6:57 am on March 19, 2015, the detective returned to 2-B Eagle Run and observed the parent exit the garage in the vehicle registered to her with a child in the back seat. At 3:40 pm on March 19, 2015, the parent was observed returning in her vehicle to the 2-B Eagle Run address with Student WW Doe; both accessed the residence. During the period of surveillance, Student AW Doe was not observed.

Beyond the evidence introduced at hearing on June 2, 2015, no additional testimonial evidence was presented when the matter was reconvened on June 25, 2015.

Positions of the Parties

North Kingstown argues that the facts as presented by its witnesses and the exhibits establishes by clear and convincing evidence that the custodial parent lives in Warwick and thereby seeks an order of immediate disenrollment of the children from its school system.

Warwick represents that it will defer to the findings and decision of the Commissioner; if a determination is made that the children are residents of Warwick for school purposes, it will abide by such ruling and provide a public education to Students WW Doe and AW Doe.

Discussion

Based upon the law and prior decisions of the Commissioner, it is well-settled that the residency of a child for school purposes is where he or she resides, and such residency as a matter of law is in the city or town in which the child's parents reside. RIGL 16-64-1 provides that "[a] child shall be deemed to be a resident of the city or town where his or her parents reside." By its terms this provision of the General Laws creates a rebuttable presumption that establishes the residency of a child to be that of his or her parents. There has been presented nothing at hearing to rebut the presumption arising under RIGL 16-61-1. The credible and relevant evidence necessarily requires a factual conclusion that, based on the parent's residency at the 2-B Eagle Run address, the children have been residents at all relevant times at that address in the City of Warwick for school-enrollment purposes and are not entitled to attend the schools of North Kingstown.

See TR. pp. 24-33. The detective's observations at the 2-B Eagle Run address were photographically documented. See North Kingstown Exhibits 4 and 5.

Conclusion

Students WW Doe and AW Doe are residents of Warwick. Accordingly, the parent of the children is ordered to immediately dis-enroll them from the North Kingstown School District and effect their enrollment in Warwick or in another school system that is lawfully aligned with the children's residency for school-enrollment purposes.

George M. Muksian
Hearing Officer

Approved:

David V. Abbott
Acting Commissioner of Education

Date: July 16 , 2015